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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 CR 680 (JMF)

5 CARLTON P. CABOT,

6 Defendant.

7 -----x

8 New York, N.Y.
9 October 14, 2015
3:30 p.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 CHRISTIAN EVERDELL

EDWARD IMPERATORE

18 Assistant United States Attorney

19 DEVERAUX L. CANNICK

Attorneys for Defendant

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1 (Case called)

2 MR. EVERDELL: Christian Everdell and Edward
3 Imperatore for the government.

4 MR. IMPERATORE: Good afternoon, your Honor.

5 THE COURT: Good afternoon, both of you.

6 MR. CANNICK: Good afternoon, your Honor. Deveraux
7 Cannick for Mr. Cabot.

8 THE COURT: Good afternoon, Mr. Cannick, and good
9 afternoon, Mr. Cabot.

10 All right. Mr. Cabot, my name is Jessie Furman. I'm
11 an United States District Judge here in the Southern District
12 of New York. I am assigned to your case, which means that I
13 will preside over it up to and including trial, if it comes to
14 that, and if it comes to sentencing, then I would be the judge
15 who would impose sentence.

16 The purpose of today's proceeding is to arraign you on
17 the indictment S1 15 CR 680 and also to set a schedule for the
18 proceedings for the filing of any motions and the like. I
19 should note before I proceed, I just wanted to note, given the
20 dates of some of the offenses in the indictment, that as
21 Mr. Cannick certainly knows, I was an Assistant United States
22 Attorney in the Southern District of New York until the spring
23 of 2012, when I took the bench. I have no reason to believe
24 that I have anything to do with any investigation of the crimes
25 charged in the indictment, but I want to confirm that you have

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1 no reason to think otherwise as well.

2 MR. EVERDELL: I have no reason to think so as well.

3 THE COURT: In light of that, I have no reason or
4 basis to think I need to or should recuse myself from this
5 matter. If you have any reason to think otherwise, Mr. Cannick
6 can file a motion on that issue. Any motion on that issue
7 would be due two weeks from today.

8 With that, let's proceed directly to the arraignment.
9 Mr. Cabot, I would ask you to please rise.

10 You have seen a copy of the indictment S1 15 CR 680
11 charging you with seven counts?

12 THE DEFENDANT: Yes.

13 THE COURT: Have you read the indictment?

14 THE DEFENDANT: Yes.

15 THE COURT: Have you discussed it with Mr. Cannick?

16 THE DEFENDANT: I haven't.

17 THE COURT: Would you like me to read it out loud, or
18 do you waive its public reading?

19 THE DEFENDANT: I waive its public reading.

20 THE COURT: How do you plead at this time; guilty or
21 not guilty?

22 THE DEFENDANT: Not guilty.

23 THE COURT: All right. Thank you. You may be seated.

24 Mr. Everdell, first tell me what status of the speedy
25 trial clock is, please.

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1 MR. EVERDELL: Your Honor, the grand jury returned the
2 indictment last Wednesday, October 7. Time was not excluded to
3 this conference date, so I believe is approximately seven days
4 off the clock.

5 THE COURT: All right. Can you just summarize the
6 nature of the charges and then talk to me about the status and
7 nature of discovery, please?

8 MR. EVERDELL: Yes, your Honor. The charges stem
9 essentially from the fraud scheme involving real estate
10 investments called tenant in common, otherwise known as TIC
11 investments. And as alleged in the indictment, the government
12 alleges that the defendant was involved in a scheme to defraud
13 investors in several TIC investments conspired by Cabot
14 Investment Properties, a company run by the defendant.

15 There are also money laundering charges associated
16 with that by movement of funds, so the first four counts of
17 conspiracy to commit securities fraud and substantive
18 securities fraud Counts Two, wire fraud for Count Three,
19 conspiracy substantive wire fraud, Count Four, and then money
20 laundering conspiracy and substantive counts for Five, Six, and
21 Seven.

22 THE COURT: All right. What about discovery?

23 MR. EVERDELL: Discovery, your Honor, there are
24 basically three areas of discovery. There are documents to be
25 obtained by subpoena. Those are mostly bank records. Also,

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1 records from the property managers who managed some of the
2 properties involved in the TIC investments and some other
3 documents that we have by subpoena.

4 I tried to get an estimate of the amount of documents
5 that was. The problem was that I am working with different
6 agencies, and each agency has certain portions of the
7 documents. I haven't been able to collect them into one place
8 together, so I don't know at this point how voluminous they
9 are.

10 We did cut a number of companies in excess of, I don't
11 know, 40 or so, 50 subpoenas in this case. There are a number
12 of documents we obtained by subpoena. The second category are
13 documents that we obtained from the victims of the fraud, the
14 actual TIC investors who received documents and mailings and
15 other correspondence from Cabot Investment Properties and the
16 defendant, so they have turned over documents to our agents.
17 That is a much smaller set of documents. Again, I can't put an
18 estimate on the size yet because I haven't been able to
19 coordinate with each of the agents that received those them.

20 Then there is a handful of paper documents, maybe
21 three or four boxes worth. So I guess, in summary, your Honor,
22 the subpoenaed documents are going to be -- there is some
23 volume there, not overly voluminous. The trick in producing
24 them -- and at the end of this, your Honor, I am going to
25 request one month to produce discovery -- the reason being is

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1 that all three agents on my case are now unavailable. One is
2 about to retire, one is on her honeymoon, and the other is on
3 maternity leave. I need some time for them to come back before
4 I can actually collect all of this. Once they're back, should
5 be fairly soon -- at least the one on her honeymoon -- I should
6 be able to collect them and produce them by a month's deadline.

7 THE COURT: Couple questions. First, Mr. Cannick, any
8 post-arrest statements?

9 MR. EVERDELL: In terms of motion to suppress
10 post-arrest statements here and also no search warrants
11 conducted. In terms of motion practice, if that is the area
12 where are you headed with the question, I don't see necessarily
13 any motion to suppress here. It is really more on the lines of
14 motions in limine, things before trial.

15 THE COURT: All right. I take it no recordings at
16 issue as well, is that correct?

17 MR. EVERDELL: Your Honor, there are, now that you
18 mention, I do believe we have some recordings of investor calls
19 that were made during the time of the fraud scheme. I don't
20 know how many of those we have because we got these a little
21 after the time period of the fraud. I don't think they were
22 all available. We do have some of those. They are not
23 undercover recordings in that nature.

24 THE COURT: Meaning recordings obtained pursuant to
25 subpoena as well?

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1 MR. EVERDELL: Correct. Yes, your Honor.

2 THE COURT: All right. Very good. I will give you a
3 month to produce that discovery. That is to say, I'll give you
4 until November 13, with the understanding that to the extent
5 that you can produce things on a rolling basis between now and
6 then, it sounds like some of it is -- I would assume some of it
7 is already in your possession and you should do that. I'll
8 give you a deadline of November 13.

9 I should also ask you, insofar as there are victims in
10 this case, have those victims been notified of their rights
11 under the Crime Victims' Rights Act?

12 MR. EVERDELL: Yes, your Honor. We have been
13 coordinating with the office's victim witness coordinator and I
14 have had the agent coordinate with her, with the known victims
15 that we're aware of. I believe the necessary notifications
16 have gone out.

17 THE COURT: I assume they will continue to be notified
18 as required by the statute?

19 MR. EVERDELL: Yes, your Honor.

20 THE COURT: All right. Mr. Cannick, as you may know,
21 my intention is to set a deadline for the filing of any defense
22 pretrial motions, and then I will have you guys back after any
23 such motion would be fully briefed, and I'll talk about that in
24 a moment.

25 My question for you is, insofar as you'll have the

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1 discovery no later than November 13, then you have a general
2 description of what to expect. How much time would you like to
3 consider and prepare and file any motions?

4 MR. CANNICK: Your Honor, in my conversation with the
5 government prior to the court coming in, we discussed what the
6 discovery situation would be like in terms of getting it in a
7 month period and for us to at least take a general look and see
8 exactly what is there and come back and apprise the court on
9 December 14.

10 Having heard what the court's intention is in terms of
11 trying to see whether or not there would be any motions that
12 would be appropriate from listening to the government, I don't
13 think there would be anything that would require us filing a
14 motion. If there is a situation that changes, then from my
15 review of discovery, certainly I would move as quickly as I
16 possibly could in terms of getting a response or filing motions
17 on Mr. Cabot's behalf. From what we discussed and what was
18 represented in court by the government, I don't anticipate
19 there would be any motions.

20 THE COURT: All right. Well, be that as it may, I
21 will be inclined to follow my usual practice, to give you a
22 deadline for any filing of any motions and set a pretrial
23 conference for any motion that would be submitted. If you
24 decide not to file any motions and want to expedite that
25 conference, you can certainly submit a letter to that effect

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1 and we can move everything up.

2 But given that, how much time would you like or when
3 would you like that deadline set for, assuming it is a
4 reasonable request?

5 MR. CANNICK: Sometime around the middle of January,
6 your Honor.

7 THE COURT: I think that makes sense and avoids any
8 potential for holidays to extend or disrupt the briefing
9 schedule. I will give you until January 15 to file any defense
10 motions. Any opposition to such a motion would be due on
11 January 29, and any reply would then be due on February 5.

12 I'll then have you back on February 9 at 3:30 in the
13 afternoon at which time, if any motions have been filed, you
14 should be prepared to address them. Because if I can address
15 them from the bench, I may well do so.

16 It sounds like this is unlikely, but if there is a
17 need for a hearing, then we will schedule the hearing that time
18 and if not before. In either case okay, whether there are
19 motions filed or not, I will be setting a trial date at that
20 conference. As you may know, when I set a trial date, it is a
21 firm date. In advance of the conference, counsel should confer
22 with respect to when you would want to have a trial. To the
23 extent that I can honor your request, I will make every effort
24 to do that.

25 MR. CANNICK: Your Honor, could we go into the

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1 following week in February for the return date? I will be out
2 of the country on the February 9 date.

3 THE COURT: Unfortunately I am out the following week
4 myself. Why don't I have you back then on Tuesday,
5 February 23. Does that work?

6 MR. CANNICK: That works, your Honor, for me.

7 THE COURT: Tuesday, February 23, at 3:30 as well.
8 Same instructions and guidance with respect to that conference
9 applies.

10 I should also note that, Mr. Cannick, if you do not or
11 decide that there are no motions to be filed and you want to
12 expedite the proceedings, that is to say move the conference
13 up, then you should just submit a letter to that effect, and
14 I'm happy to move things up to sometime in January or even
15 December, if you're in a position to tell me by then.

16 Mr. Everdell, any application with respect the Speedy
17 Trial Act?

18 MR. EVERDELL: Yes, your Honor. We request that the
19 time until the next conference date of February 23 be excluded
20 under the speedy trial clock to give the defense a chance to
21 review discovery and to discuss any possible disposition that
22 might exist.

23 THE COURT: Any objections?

24 MR. CANNICK: None, your Honor.

25 THE COURT: I will exclude time between today and

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1 February 23, 2016, when I find that the ends of justice served
2 by excluding that time outweigh the interest of the public and
3 the defendant in a speedy trial in view of the voluminous
4 nature of the discovery in this case and to allow the defendant
5 and defense counsel time to review that discovery, consider
6 whether there are any motions to be filed, and to prepare those
7 motions.

8 Anything else, Mr. Everdell?

9 MR. EVERDELL: No, your Honor.

10 THE COURT: Mr. Cannick.

11 MR. CANNICK: I think we have something else, your
12 Honor. It might be an ex parte application.

13 THE COURT: All right. You know how to find me. We
14 are adjourned then. Thank you very much.

15 MR. CANNICK: Your Honor, if the court pleases, we
16 could make the application orally.

17 MR. EVERDELL: We are happy to depart, your Honor.

18 THE COURT: I will note that somebody else is in the
19 courtroom. Is that an issue?

20 MR. CANNICK: That's not an issue.

21 THE COURT: If you have no objection, Mr. Everdell?

22 MR. EVERDELL: No objection, your Honor.

23 THE COURT: I will stay on the bench then. Have a
24 pleasant afternoon.

25 (Pages 12-15 SEALED by order of the Court)